

~~EX PARTE UNDER SEAL NOT A FOIA RELEASE NOT FOR PUBLIC RELEASE~~

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY and
KENNETH P. VOGEL,

Plaintiffs,

— versus —

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

No. 18 Civ. 2095 (LAK) (SDA)

EX PARTE SUPPLEMENTAL DECLARATION OF PATRICK N. FINDLAY

Pursuant to 28 U.S.C. § 1746, I, Patrick N. Findlay, declare the following to be a true and correct statement of facts:

1. As stated in my November 9, 2018, public declaration filed previously in this case (Docket No. 43) (“First Public Declaration”), I am the Acting Chief and Special Counsel of the Office of Strategy Management and Development of the National Security Division of the United States Department of Justice.¹ Additional information about my responsibilities is provided in the First Public Declaration. *See* First Public Decl. ¶ 1. I submit this supplemental ex parte declaration in further support of the government’s motion for partial summary judgment and in opposition to plaintiffs’ cross-motion.

¹ In this supplemental declaration, I employ the same acronyms and terms as I did in the First Public Declaration and in my prior ex parte declaration previously filed in this case, also dated November 9, 2018, (Docket No. 46) (“First Ex Parte Declaration”).

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2. The statements I make in this declaration are based on my personal familiarity with the FOIA requests and related information at issue in this matter, as well as upon information provided to me by various DOJ colleagues overseeing or participating in the investigations discussed herein. Where information relates to a specific investigation, that information has been reviewed for accuracy by one or more individuals assigned to that investigation.

Update on [REDACTED]

3. In the First Ex Parte Declaration, I explained that release of the FARA Unit records requested in this case could reasonably be expected to interfere with enforcement actions against [REDACTED]

[REDACTED]

4. On December 17, 2018, criminal charges were unsealed in the Eastern District of Virginia against two individuals: Bijan Rafiekian, aka Bijan Kian, and Kamil Ekim Alptekin. *See United States v. Rafiekian et al.*, No. 18 Cr. 457 (E.D.V.A.). Alptekin is specifically enumerated in group C of the FOIA requests.

5. These unsealed indictments are [REDACTED]

[REDACTED]

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6. In light of these developments in the investigation, I provide the following updates to the harms that could reasonably be expected to result from release of withheld material [REDACTED]. These harms were previously discussed in my First Ex Parte Declaration at [REDACTED].

[REDACTED]

7. First, the criminal proceedings against Kian and Alptekin are now public. All of the subjects of those proceedings, including the one who has not been charged at this time, are presumably aware of the proceedings. Nonetheless, revealing the contents of the letter withheld as *Vaughn* category 2 could still reasonably be expected to interfere with the proceedings, because the letter contains evidence relevant to the criminal prosecutions and investigation. Thus, the government continues to withhold the letter because its release now would provide Kian and Alptekin earlier and greater access to evidence than otherwise would be available under the Federal Rules of Criminal Procedure and other applicable laws. [REDACTED]

[REDACTED]

8. Second, both forms of intra-DOJ correspondence [REDACTED]—the internal correspondence and news distributions—also continue to be withheld notwithstanding the new public criminal filings. The harms described in paragraphs 44 through 47 and 52 through 53 of my First Ex Parte Declaration persist and are not diminished by the public criminal filings. [REDACTED]

[REDACTED]

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Update on [REDACTED]

9. On January 8, 2019, criminal charges were unsealed in the Southern District of New York against Natalya Veselnitskaya, a Russian national. *See United States v. Veselnitskaya*, No. 18 Cr. 904 (S.D.N.Y.).

10. Although Veselnitskaya is not specifically listed in the plaintiffs' FOIA requests, the criminally charged conduct relates to a government investigation into Prevezon Holdings, which is listed in group D. [REDACTED]

11. The charges against Veselnitskaya stem from her alleged obstruction of justice in a factually-related civil case, *United States v. Prevezon Holdings, Ltd.*, No. 13 Civ. 6326 (S.D.N.Y.). The government litigated that case between 2013 and 2018.

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General Information in *Vaughn* Index

13. Although [REDACTED]
[REDACTED], without risk of enabling interference with enforcement proceedings, the government still cannot provide a more detailed public *Vaughn* index with regard to the FOIA Exemption 7(A) withholdings than was previously provided.

14. First, the reasons given in paragraphs 59 through 62 of my First Ex Parte Declaration remain valid. Specifically, [REDACTED]
[REDACTED]
[REDACTED]

15. Second, providing further detail about any portion of the records – for example, those relating to publicly filed criminal cases – would still interfere with [REDACTED]
[REDACTED]

16. Third, as described in paragraph 62 of my First Ex Parte Declaration, disclosing overview information or data of the sort commonly found in a public *Vaughn* index—for example, a list of each email containing its sender, recipients, date, and subject line—could

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reasonably be expected to interfere with enforcement proceedings [REDACTED]

[REDACTED]. Sophisticated observers could use such overview information and data to draw inferences about what the government knew—including who within the government knew it—and when the government knew it. For example, if a *Vaughn* index disclosed significant intra-DOJ email traffic during a specific time period, correlating this fact with other publicly known events could shed light on the nature and timing of the government's investigative interests.

17. As explained in paragraph 61 of my First Ex Parte Declaration, the concerns raised above are magnified in the context of ongoing investigations both because the government cannot be sure what the subjects or targets of investigations know or may find significant, and because the government's own interests in specific persons or topics may change over the course of an investigation. For these reasons, it is DOJ's usual practice to avoid disclosing any substantial information regarding ongoing investigations beyond that provided in unsealed court filings or proceedings. Further, DOJ and its components generally decline to confirm or deny information suggesting that DOJ does or does not have an active investigative interest in any specific persons, often issuing Glomar responses to FOIA requests seeking investigative information related to specific persons. DOJ's usual practice notwithstanding, in this particular instance, DOJ concluded that a Glomar response would not be appropriate [REDACTED]

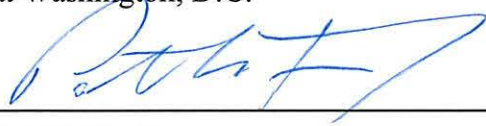
[REDACTED]. The concerns underlying DOJ's usual practice, however, remain in place.

CONCLUSION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

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Executed this 15 day of February, 2019, at Washington, D.C.



Patrick N. Findlay